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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. 5872
12	NICHOLAS BOWENS, aka NICHOLAS JONATHAN BOWENS
13	5708 Vineland Ave.A C C U S A T I O NNorth Hollywood, CA 91601A C C U S A T I O N
14	Pharmacy Technician Registration No. TCH
15	62120 Respondent.
16	
17	Complainant alleges:
18	PARTIES
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about September 1, 2005, the Board of Pharmacy issued Pharmacy Technician
22	Registration Number TCH 62120 to Nicholas Bowens, aka Nicholas Jonathan Bowens
23	(Respondent). The Pharmacy Technician Registration was in full force and effect at all times
24	relevant to the charges brought herein and will expire on June 30, 2017, unless renewed.
25	JURISDICTION
26	3. This Accusation is brought before the Board, under the authority of the following
27	laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28	indicated.
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1	STATUTORY PROVISIONS
2	4. Section 4059, subdivision (a), of the Code states, in pertinent part:
3	"A person may not furnish any dangerous drug, except upon the prescription of a physician,
4	dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
5	person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
6	podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."
7	5. Section 4060 of the Code states, in pertinent part:
8	"No person shall possess any controlled substance, except that furnished to a person upon
9	the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
10	pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
11	nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
12	physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
13	or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
14	subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
15	apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
16	pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
17	nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
18	labeled with the name and address of the supplier or producer.
19	"This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician
20	assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."
21	6. Section 4300, subdivision (a), of the Code states that "[e]very license issued may be
22	suspended or revoked."
23	7. Section 4300.1 of the Code states:
24	"The expiration, cancellation, forfeiture, or suspension of a board-issued license by
25	operation of law or by order or decision of the board or a court of law, the placement of a license
26	on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
27	of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
28	proceeding against, the licensee or to render a decision suspending or revoking the license."
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1	8. Section 4301 of the Code states, in pertinent part:
2	"The board shall take action against any holder of a license who is guilty of unprofessional
3	conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
4	not limited to, any of the following:
5	••••
6	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous
7	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
8	oneself, to a person holding a license under this chapter, or to any other person or to the public, or
9	to the extent that the use impairs the ability of the person to conduct with safety to the public the
10	practice authorized by the license."
11	
12	"(j) The violation of any of the statutes of this state, or any other state, or of the United
13	States regulating controlled substances and dangerous drugs.
14	
15	"(k) The conviction of more than one misdemeanor or any felony involving the use,
16	consumption, or self administration of any dangerous drug or alcoholic beverage, or any
17	combination of those substances
18	
19	"(I) The conviction of a crime substantially related to the qualifications, functions, and
20	duties of a licensee under this chapter
21	
22	"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
23	violation of or conspiring to violate any provision or term of this chapter or of the applicable
24	federal and state laws and regulations governing pharmacy, including regulations established by
25	the board or by any other state or federal regulatory agency"
26	"(p) Actions or conduct that would have warranted denial of a license"
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1	REGULATORY PROVISION
2	9. California Code of Regulations, title 16, section 1770 states, in pertinent part:
3	"For the purpose of denial, suspension, or revocation of a personal or facility license
4	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5	crime or act shall be considered substantially related to the qualifications, functions or duties of a
6	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7	licensee or registrant to perform the functions authorized by his license or registration in a manner
8	consistent with the public health, safety, or welfare."
9	COST RECOVERY
10	10. Section 125.3 provides that the Board may request the administrative law judge to
11	direct a licentiate found to have committed a violation or violations of the licensing act to pay a
12	sum not to exceed the reasonable costs of the investigation and enforcement of the case, with
13	failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a
14	case settles, recovery of investigation and enforcement costs may be included in a stipulated
15	settlement.
16	STATE DRUG STATUTES
17	11. Section 4022 of the Code prohibits the dispensing or furnishing of a dangerous drug
18	or dangerous device, which is any drug or device that is unsafe for self-use in humans or animals,
19	without a prescription or as legally authorized.
20	12. Health and Safety Code section 11007 states that "controlled substance" unless
21	otherwise specified, means a drug, substance, or immediate precursor which is listed in any
22	schedule in Section 11054, 11055, 11056, 11057, or 11058.
23	13. Health and Safety Code section 11377, subdivision (a), states, in part, that:
24	"Except as authorized by law and as otherwise provided in subdivision (b) or Section
25	11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
26	Business and Professions Code, every person who possesses any controlled substance which is
27	(5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a
28	physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished
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1	by imprisonment in a county jail for a period of not more than one year or in the state prison."
2	<b>CONTROLLED SUBSTANCES / DANGEROUS DRUGS</b>
3	14. Cocaine Metabolite - Cocaine, and any cocaine base, is a narcotic drug according to
4	Health and Safety Code section 11019(e). It is a Schedule I controlled substance, as designated in
5	Health and Safety Code section 11054(f)(1), and a Schedule II controlled substance, as designated
6	in Health and Safety Code section 11055(b)(6). It is categorized as a dangerous drug according to
7	Business and Professions Code section 4022.
8	15. Methamphetamine is a Schedule II controlled substance as designated by Health and
9	Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
10	Business and Professions Code section 4022.
11	16. Opiates are Schedule I controlled substances pursuant to Health and Safety Code
12	section 11054, subdivision (a)(b), and a dangerous drug pursuant to section 4022.
13	FIRST CAUSE FOR DISCIPLINE
14	(Conviction of a Substantially Related Crime)
15	17. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
16	subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, on the
17	grounds of unprofessional conduct, in that Respondent was convicted of a crime, which is
18	substantially related to the qualifications, functions, or duties of a pharmacy technician, as
19	follows:
20	a. On or about July 19, 2016, Respondent, after entering a plea of nolo contendere, was
21	convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (e)
22	[driving while under the influence of drugs], in the criminal proceedings entitled The People of
23	the State of California v. Nicholas Jonathan Bowens (Super. Ct. Los Angeles, 2016, No.
24	6VV01448). The court sentenced Respondent 3 years of summary probation, ordered
25	Respondent to enroll in a 3-month First Offender drug education and counseling program and
26	enroll in a 52-week parenting skills program. Respondent was also ordered to pay fines, fees, and
27	restitution and perform community labor.
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1	b. The circumstances surrounding the conviction are that on or about March 27, 2016,
2	Los Angeles Police Department officers responded to a traffic investigation. Upon arrival,
3	officers observed Respondent's vehicle had collided with a power pole. Respondent was standing
4	outside the vehicle on the sidewalk and was carrying his two year old daughter who was a
5	passenger in the vehicle. Officers observed that Respondent displayed a flushed and droopy face.
6	He displayed constricted pupils and droopy eyelids and his voice was slow and raspy.
7	Respondent admitted to officers that he bought 1 gram of Heroin for \$80.00 and smoked it at
8	approximately 2300 hours. While conducting a search of Respondent's car, officers found a
9	piece of foil with heroine residue on the front passenger side. Another piece of tin foil containing
10	a white crystalline substance resembling methamphetamine fell out of the driver side door. In the
11	center console, a blue pipe with residue was also found. These items were sent to a laboratory for
12	testing which revealed heroin and methamphetamine. At the Van Nuys Community Police
13	Station, officers discovered additional narcotics hidden in Respondent's left shoe, and a
14	toxicology screen of Respondent revealed the presence of cocaine metabolite, methamphetamine,
15	and opiates in his system.
16	SECOND CAUSE FOR DISCIPLINE
17	(Violation of State Laws Regulating Controlled Substances)
18	18. Respondent is subject to disciplinary action under sections 4300 and 4301,
19	subdivision (j), on the grounds of unprofessional conduct, in that on or about March 27, 2016,
20	Respondent violated Health and Safety Code section 11377, subdivision (a), by illegally
21	possessing controlled substances and dangerous drugs, to wit: heroin and methamphetamine, as
22	set forth in paragraph 17, above.
23	THIRD CAUSE FOR DISCIPLINE
24	(Unlawful Use of Controlled Substances)
25	19. Respondent is subject to disciplinary action under sections 4300 and 4301,
26	subdivision (h), on the grounds of unprofessional conduct, in that on or about March 27, 2016,
27	Respondent administered to himself controlled substances, to wit: cocaine metabolite,
28	methamphetamine, and opiates, to the extent or in a manner as to be dangerous or injurious to
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1	oneself and to the public, as further described in paragraph 17, above.
2	FOURTH CAUSE FOR DISCIPLINE
3	(Violating Pharmacy Law / Acts Warranting Denial of Licensure)
4	20. Respondent is subject to disciplinary action under Code section 4301, subdivisions
5	(o) and (p), on the grounds of unprofessional conduct, in that Respondent committed acts
6	violating the Pharmacy Law and/or federal and state laws that would have warranted denial of a
7	license. Complainant refers to and by this reference incorporates the allegations set forth above
8	in paragraph 17, inclusive, as though set forth fully.
9	PRAYER
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11	and that following the hearing, the Board of Pharmacy issue a decision:
12	1. Revoking or suspending Pharmacy Technician Registration Number TCH 62120,
13	issued to Respondent Nicholas Bowens, aka Nicholas Jonathan Bowens;
14	2. Ordering Respondent Nicholas Bowens, aka Nicholas Jonathan Bowens to pay the
15	Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
16	pursuant to Business and Professions Code section 125.3; and,
17	3. Taking such other and further action as deemed necessary and proper.
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19 20	DATED: 5/15/17 Diginia Lolp
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22	Executive Officer Board of Pharmacy
23	Department of Consumer Affairs State of California
24	Complainant
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